IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 317 OF 2005

WITH

CRIMINAL REVISION APPLICATION NO. 318 OF 2005

Dr. Pankaj C. Gandhi ..... Revisionist/Applicant (In both the Revision Applications)

Versus

State of Maharashtra ..... Respondent No. 1 (In both the Revision Applications)

AND

Mr. Rohit Maneklal Sanghvi ..... Respondent no. 2 (In both the Revision Applications)

Mr. D.U. Mirajkar for Revisionist
Mr. S.K. Pande for Respondent No. 1.
Mr. V.V. Nikam, APP

CORAM : ABHAY S. OKA, J.

DATE : 31ST AUGUST, 2006

P.C.

1) Submissions of the learned Advocates appearing for the parties were heard on the last date.

2) In Criminal Revision Application 317 of 2005 the challenge is to the Judgment and Order dated 24th August 2005 passed in Miscellaneous Application taken out in Criminal Appeal No. 207. The Criminal Appeal

No. 207 of 2005 is filed by an accused against the order of conviction under Section 138 of The Negotiable Instruments Act. The Miscellaneous Application was made by a third party-Applicant praying that he may be allowed to participate in the Criminal Appeal in the larger interests of justice. The said third party-Applicant is the Respondent No. 2 in both the Revision Applications. In Criminal Revision Application no. 318 of 2005 the challenge is to similar order passed on 24th August 2005 in companion Appeal on an application filed by the second Respondent containing similar prayer.

3) The second Respondent is the son of the original complainant who expired on 3rd May 2005. The complainant expired just 3 days before the order of conviction was passed by the learned Magistrate. The submission made in the application filed by the second Respondent is that as the original complainant has expired, he wants to represent original complainant and make submissions on merits of the case. The said application has been allowed by the Sessions Court by permitting the second Respondent to appear as a party in the Criminal Appeals. The Learned Additional Sessions Judge directed the present applicant who was the Appellant in the Appeal to pay costs of Rs.1,000/- to the second Respondent.

4) The learned Counsel appearing for the Applicant

submitted that the respondent no. 2 had no locus standi in an appeal against conviction filed by the Applicant. He submitted that the decision of learned Single Judge of this Court in the case of Umesh Kanjibhai Vs. Nitin will have no application to the facts of the case. He submitted that the said decision was rendered in a case where the original complainant had died during the pendency of an appeal against acquittal and therefore permission was granted by this Court to the brother of the complainant to pursue the appeal against acquittal. He submitted that in this case, complainant has died prior to the date on which order of conviction was passed. He submitted that in any event the learned Additional Sessions Judge could not have directed the applicant to pay costs to the second Respondent. The learned counsel for the second Respondent supported the impugned orders.

5) I have considered the submissions. There is no dispute about the relationship between the second respondent and the original complainant. There is also no dispute about the fact that the original complainant died three days before the order of conviction was passed. The conviction is under Section 138 of The Negotiable Instruments Act, 1881 on complaints filed by the deceased complainant.

6) Considering these facts, I find no error with the approach of the Sessions Judge. The Sessions Court

has rightly relied on the Judgment in the case of Umesh Kanchibhai Vs. Nitin (supra). The applicability of the said decision does not depend on the particular facts of the case in that decision. What is to be applied is the ratio of the decision. The effect of the impugned order is that the second Respondent will be entitled to participate in the hearing of the appeal and will be entitled to support the order of conviction.

7) Advocate for the applicant has rightly assailed the order of costs passed by the learned Additional Sessions Judge and to that extent the order needs modification. While deciding application made by the second Respondent, there was no occasion to direct the applicant to pay costs. Hence, I pass following order.

O R D E R

1) Clause Nos.1 and 2 of the Operative Part of the impugned Judgments and Orders are confirmed.

2) Clause No. 3 of the Operative Part of the impugned Judgments and Orders by which the direction has been given to the Applicant to pay costs of Rs.1,000/- to the second Respondent is set aside.

3) Parties to act on an authenticate copy of this order.

(ABHAY S. OKA, J.)